



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 15, 25, 27, 74, 78, and 101

[GN Docket No. 22-352; FCC 23-36; FR ID 148340]

Expanding Flexible Use of the 12.7-13.25 GHz Band for Mobile Broadband or Other Expanded Use

AGENCY: Federal Communications Commission.

ACTION: Final order.

SUMMARY: In this document, the Federal Communications Commission (Commission) directs certain fixed and mobile Broadcast Auxiliary Services (BAS) and Cable Television Relay Services (CARS) licensees authorized to use the 12.7-13.25 GHz (12.7 GHz) band to certify the accuracy of the information reflected on their licenses, including whether their facilities are *operating* as authorized. If a licensee is unable to make such a certification for a given license, it must cancel or modify the license in accordance with the Commission's rules. The Order is intended to improve the data that the public and the Commission have to make informed comments and decisions about the proposals discussed in the concurrent notice of proposed rulemaking, published elsewhere in this issue of the *Federal Register*, in which the Commission proposes to protect only those 12.7 GHz BAS and CARS stations for which the licensee timely files the certification required in this Order. A subsequent public notice will provide detailed filing instructions and establish a window for the filing of certifications.

DATES: The order is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Simon Banyai of the Wireless Telecommunications Bureau, at simon.banyai@fcc.gov or (202) 418-1443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in GN Docket No. 22-352 included in the Report and Order and Further Notice of Proposed

Rulemaking and Notice of Proposed Rulemaking and Order, FCC 23-36, adopted on May 18, 2023 and released on May 19, 2023. The full text this document is available at <https://docs.fcc.gov/public/attachments/FCC-23-36A1.pdf>. The Report and Order and the Further Notice of Proposed Rulemaking (WT Docket No. 20-443), and the Notice of Proposed Rulemaking and the Order (GN Docket No. 22-352), i.e., the four FCC actions in FCC 23-36, are published separately in the Rules and Regulations and the Proposed Rules sections, as applicable, of this issue of the *Federal Register*.

Paperwork Reduction Act: The Order in GN Docket No. 22-352 does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, the Order does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

Synopsis

I. ORDER IN GN DOCKET NO. 22-352

1. In the 12.7 Notice of Inquiry (12.7 NOI), the Commission noted that to the extent it considers relocation of incumbents, or even future sharing between incumbents and new entrants, it will be important to have clear information about the nature and density of incumbent use.¹ Accordingly, the Commission sought comment on whether to require incumbents in the 12.7 GHz band to submit information detailing their current use of the band, and if so, what such information it should require to be submitted.²

2. In response, several commenters urge the Commission to require incumbents to confirm that they are actually operating in the band and to provide detailed information about

¹ See *In the Matter of Expanding Use of the 12.7-13.25 GHz Band for Mobile Broadband or Other Expanded Use*, GN Docket No. 22-352, Notice of Inquiry, FCC 22-80, 2022 WL 16634851, at *9, para. 25 (Oct. 28, 2022) (12.7 NOI). Record references and citations refer to GN Docket No. 22-352, unless otherwise noted.

² *Id.* (citing Letter from Scott K. Bergmann, Senior Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-352, at 3 (filed Oct. 20, 2022)).

their operations including transmitter and receiver characteristics.³ For the 23 uplink Earth stations authorized in the band, and for the fixed point-to-point links authorized under parts 78 and 101, the operator or licensee must file a separate renewal application for each authorization.⁴ All of the fixed links under part 101, however, were first authorized relatively recently (2017 or later) and typically consist of paired transmitters and receivers providing a communications link between two fixed locations. By contrast, many of the Broadcast Auxiliary Services (BAS) and Cable Television Relay Services (CARS) incumbents were first authorized decades ago to use channels throughout the 12.7 GHz band over geographic areas for operations typically consisting of a collection of receive sites, mobile equipment, and control equipment,⁵ which heightens the

³ See, e.g., AT&T Comments at 4 (asserting that to rationally assess how to protect non-Federal incumbents' operations, the Commission should require them to provide detailed "technical and operational data about their services, including transmitter and receiver characteristics"); Ericsson Comments at 12 ("Ericsson supports the Commission seeking information on incumbent use in the band to help assess how it can optimize the introduction of mobile broadband in the 12.7 GHz band"); NCTA Comments at 12 ("NCTA applauds the Commission's collection of more detailed and up-to-date information regarding incumbents to help facilitate consideration of 'sharing between incumbents and new entrants'") (quoting *12.7 NOI* at *9, para. 25); Nokia Comments at 3 (urging the Commission to "require incumbents in the 12.7 GHz band to provide relevant and accurate data" and to use that data to conduct an "in-depth evaluation of the sharing or coexistence conditions for the different incumbent uses in the band" to determine more conclusively "which incumbent services could share the band with mobile broadband, and which incumbent services should be relocated."); Qualcomm Comments at 9 (contending that "licensing records do not fully reflect actual use or the intensity of that use" and that "[a]ccurate and updated data on the uses of the band are instrumental" to evaluating possible expanded uses and encouraging the Commission to ask incumbent licensees to (1) "confirm whether they are actually operating on the frequency band"; (2) "provide data about their operations", and (3) provide "the actual technical parameters of such operations."); T-Mobile Comments at 8 (stating that as part of relocating incumbents, the Commission could "require incumbent licensees to provide information about their operations, including certifying to their use, to ensure the accuracy of cost estimates related to their systems."); Verizon Comments at 10 (stating that the Commission "should collect information about how much spectrum incumbent operators use to support their services, the breadth of geographic use by licensees," and "should also establish a deadline for operators to provide this information so that stakeholders may be on notice regarding further action in this proceeding."); Letter from Sarah Leggin, Assistant Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-352, at 2 (filed May 5, 2023) (urging the Commission to require CARS licensees to certify that the COALS database accurately reflects current operations in the 12.7 GHz band).

⁴ See 47 CFR 25.121(b), 78.15(a), 78.29, and 101.5; see also *id.* § 1.949. For the 12.7 GHz band incumbents licensed under part 74, however, most BAS authorizations are associated with a parent broadcast license and renewed automatically upon renewal of the parent broadcast license. See 47 CFR 74.15(b), (e). Although this streamlined process reduces paperwork burdens and avoids termination of BAS authorizations that support ongoing broadcast operations, it may also increase the probability of inaccurate licensing and operational data in the Commission's records.

⁵ See, e.g., *Improving Public Safety Communications in the 800 MHz Band*, WT Docket 02-55, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd. 4393, 4408 para 44 (2008); *Improving Public Safety Communications in the 800 MHz Band*, WT Docket 00-55, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969 (2004).

need to ensure that these authorizations in the Universal Licensing System (ULS)⁶ and the Cable Operations and Licensing System (COALS)⁷ still accurately reflect current operations.

3. Accordingly, to improve the data that the public and the Commission have to make informed comments and decisions about the proposals discussed in the notice of proposed rulemaking (*see* FCC 23-36, paras. 58-142) (FR 2023-13500), published elsewhere in this issue of the *Federal Register*, the Commission directs fixed and mobile BAS and CARS licensees under parts 74 and 78, to certify the accuracy of all information reflected on each license that includes authority to operate in the 12.7 GHz band, including whether the facilities are operating as authorized. If a licensee is unable to make such a certification for a given license, it must cancel or modify the license in accordance with the Commission's rules.⁸ The Commission exempts from this Order BAS and CARS licensees that have filed separate applications, on or after January 1, 2021, for new or modified licenses in the 12.7 GHz band. The Commission notes that for purposes of implementing the Paperwork Reduction Act of 1995 (PRA), these certifications are not "information" collections that require approval from the Office of Management and Budget (OMB).⁹ The Commission directs the Wireless Telecommunications Bureau, in coordination with the Media Bureau, to issue a Public Notice that will: (1) provide detailed instructions for BAS and CARS licensees to file certifications regarding existing information in ULS and COALS, respectively; and (2) establish a window for the filing of certifications. The Commission also directs the Bureaus, in coordination with the Office of

⁶ Licensing data for fixed and mobile BAS is in ULS. *See* <https://wireless2.fcc.gov/UlsApp/ApplicationSearch/searchAppl.jsp>

⁷ Licensing data for fixed and mobile CARS is in COALS. *See* <https://fccprod.servicenowservices.com/coals>

⁸ 47 CFR 74.600-74.690. Based on ULS data, 12.7 GHz band BAS licenses for the following radio service codes (followed by the approximate number of such licenses in parentheses) are subject to this certification requirement: Aural Intercity Relay (1), TV Intercity Relay (1179), TV Pickup (403), TV Studio-Transmitter Link (485), TV Translator Relay (32).

⁹ *See* 5 CFR 1320.3(h)(1) (defining "information" as not generally including certifications); *accord*, 84 FR 22733, 22734, n.12 (May 20, 2019) (concluding that the certification requirement for Earth station incumbents in the 3.7-4.2 GHz band was not considered "information" for purposes of the Paperwork Reduction Act (citing 5 CFR 1320.3(h)(1)); Notice of Office of Management and Budget Action, ICR Ref. No. 201811-3060-018 (Jan. 28, 2019), available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201811-3060-018; Federal Communications Commission, Expanding Flexible Use of the 3.7 to 4.2 GHz Band, 84 FR 13141, Apr. 4, 2019.

Economics and Analytics, to consider whether additional information should be collected from some or all 12.7 GHz band incumbents to seek comment regarding the need to initiate an information collection if such additional information is necessary to supplement the information submitted in this proceeding, and to comply with all requirements associated with any such information collection under the PRA.¹⁰

4. The Commission acknowledges that several comments recommend also seeking information from all incumbent licensees in the 12.7 GHz band, as well as in the bands adjacent to the 12.7 GHz band.¹¹ As noted in the notice of proposed rulemaking (FCC 23-36) (FR 2023-13500), the Commission’s rules require all in-band incumbents to operate in accordance with their authorizations. In the notice of proposed rulemaking,¹² the Commission specifically seeks detailed information on the receiver, antenna, and operational characteristics for services operating in the adjacent bands from incumbents in adjacent bands, including Direct Broadcast Satellite (DBS), Fixed Satellite Service (FSS) (space-to-Earth) limited to non-geostationary orbit systems (NGSO FSS), Multi-Channel Video and Data Distribution Service (MVDDS), active spaceborne sensors, and aeronautical radionavigation services (ARNS), that contend that provisions beyond the existing 12.7 GHz band fixed service protection levels for adjacent bands would be necessary for mobile broadband or other expanded-use operations in the 12.7 GHz band to prevent harmful interference to operations in those adjacent bands.

5. Although the Commission does not require incumbents to provide additional information on their existing operations at this time, the Commission proposes in the Notice of

¹⁰ While the Commission has discretion to seek comment before undertaking an information collection, it has never taken the position that such comment, other than the comment sought as part of the PRA process, is a necessary prerequisite. Because the information collection adopted here is designed solely to obtain the information necessary to evaluate whether to adopt future Commission rules, it has no direct “future effect” and as such is not a rule requiring notice under the Administrative Procedure Act (APA). *See* 5 U.S.C. 551(4).

¹¹ *See, e.g.,* Nokia Comments at 8 (contending that “the Commission should require incumbents in the ... lower and upper adjacent bands to provide relevant and accurate information about their deployments and receiver characteristics”); Verizon Comments at 10 (quoting *12.7 NOI* at *14, para. 40) (stating that the Commission “should collect information on ‘detailed information on the receiver, antenna, and operational characteristics for services operating in the adjacent bands.’”).

¹² *See* Notice of Proposed Rulemaking at para. 121.

Proposed Rulemaking to protect only those BAS and CARS stations licensed in ULS and COALS, respectively, for which the licensee timely files the certification required in this Order (to the extent they have not filed a new or modification application in ULS or COALS for the station on or after January 1, 2021) and to protect FS incumbents based on licensing data. For the 23 incumbent Earth stations in the band, the Commission also proposes in the Notice of Proposed Rulemaking to use the International Bureau Filing System (IBFS) data in defining the scope of the grandfathered status of these stations. Because the Commission may use these data to inform its deliberations regarding the future use of the 12.7 GHz band, including possible interference avoidance coordination or relocation of facilities, or grandfathered status that could require future licensees to accept harmful interference from existing operations, the Commission encourages all licensees to timely submit their data and to update their information in the event of a change in any of the operational parameters.

II. ORDERING CLAUSES

6. IT IS ORDERED that, pursuant to sections 1, 2, 4, 5, 301, 302, 303, 304, 307, 309, 310, and 316 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154, 155, 301, 302a, 303, 304, 307, 309, 310, 316, and § 1.411 of the Commission's rules, 47 CFR 1.411, the Report and Order and Further Notice of Proposed Rulemaking and Notice of Proposed Rulemaking, and Order in the captioned dockets IS ADOPTED.

7. The inquiry in *Expanding Flexible Use in Mid-Band Spectrum Between 3.7-24 GHz*, GN Docket No. 17-183, is TERMINATED as to the mid-band spectrum between 12.2 GHz and 13.25 GHz.

8. IT IS FURTHER ORDERED that, pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comment on the Further Notice of Proposed Rulemaking in WT Docket No. 20-443 and the Notice of Proposed Rulemaking in GN Docket No. 22-352 on or before the number of days shown on the first page of this document after publication in the *Federal Register*, and reply

comment on or before the number of days shown on the first page of this document after publication in the *Federal Register*.

9. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, Reference Information Center, SHALL SEND a copy of the Report and Order and Further Notice of Proposed Rulemaking and Notice of Proposed Rulemaking, and Order, including the associated Initial Regulatory Flexibility Analyses to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene Dortch,

Secretary,

Office of the Secretary.

[FR Doc. 2023-13502 Filed: 7/7/2023 8:45 am; Publication Date: 7/10/2023]